In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1151

ALOIS PETER WARREN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of having conspired to violate the federal food and drug laws relating to stimulant and depressant drugs, and on four counts of having sold, delivered, and disposed of amphetamine sulphate, in violation of 21 U.S.C. (Supp. V 1969), 321, 331(q)(2), 333 and 360a(b). He was sentenced to concurrent terms of five years' imprisonment. The court of appeals affirmed (Pet. App. A).

Petitioner's contentions that, as a physician, he was exempt from 21 U.S.C. 360a(b); that certain evidence should have been suppressed because of an illegal search; that it was error for the trial court to sentence

him without a presentence report; that his conviction under 21 U.S.C. 331(q)(2) and 333 should have been denominated a misdemeanor rather than a felony; that it was error to seize certain records (required to be kept by 21 U.S.C. 360a(d)) showing the acquisition and disposition of amphetamines without a court order or probable cause; and that it was error to use such records for impeachment since they were "testimonial," are all answered in the thorough opinion below on which we rely.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.